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**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

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The proposed settlement of the antitrust case against Microsoft is a dismal failure to provide any significant penalty, much less remedy.

First, the present case is predicated in part upon the failure of Microsoft to follow a previous consent decree. Pretending their behavior will materially improve with a second such decree is at best demonstrating a disregard for past events, and at worst collusion.

The presence of a trio of powerless enforcement watchdogs, paid and accommodated by Microsoft, living in the Microsoft culture, is akin to setting a young fox to guard the henhouse; sooner or later, the fox grows up.

Second, allowing Microsoft to settle matters with "charitable" donations of (some) hardware and (much) software demonstrates a clear ignorance of the problems Microsoft presents the industry, as well as a failure to understand simple economics.

Microsoft's power is derived from ubiquity; they gain market power with each additional user on their software, in a powerful network effect. With schools, in addition, they gain the opportunity to influence an impressionable young mind into using their software over another product... creating a lifelong customer. When tobacco companies use these tactics, they are vilified. When Microsoft uses these tactics... it is called charity??

Even setting aside the clear benefits gained from indoctrinating schoolchildren, this "charitable donation" offers no remedy whatsoever to competitors or consumers. They regain no market share, acquire no financial restitution, and gain no benefit from the resources and goodwill they have expended in helping to bring this issue before the court. Indeed, those who have testified against Microsoft are now placed in an exposed position, known to Microsoft as an enemy while they simultaneously depend on knowledge from Microsoft to develop and sell their products on the Microsoft platform.

Finally, any fixed-value donation where the donator sets the value of each item donated is inherently worthless -- should Microsoft choose to set the price of their software at 1 million dollars per unit, for the purposes of this donation, there would be no recourse. That is, of course, an extreme example, but the cost to Microsoft of providing an additional \*license\* is negligible. Their donation consists of nothing tangible and costs them nothing to offer. It is entirely a sham.

Third, reading the fine print of the agreement as recently published, it is notable that interoperability requirements placed upon Microsoft refer exclusively to commercial enterprises. This is a significant loophole when the \*only\* competitive threat to Microsoft on the desktop consists of the Linux operating system and associated open-source software. Shall Microsoft be required to provide interoperability information to "commercial competitors" while freezing out Linux (which needs to read Microsoft filesystems), StarOffice and other open-source office packages (which need access to the Office file formats), Apache (which needs to interoperate with Microsoft's Internet Explorer browser), Samba (which provides network file-sharing compatibility for UNIX systems), and other other open-source project?

It is worth noting here that any commercial product whose only competition is free has demonstrated that competition is

unprofitable, and hence, impossible to sustain.

Fourth, the antitrust case against Microsoft neglected to examine the entire issue. This is not a case where a single monopoly exists, but rather a network of interconnected monopolies and potential monopolies. I have outlined them below:

1) The operating system monopoly

Microsoft has an unchallenged monopoly on desktop operating systems for the Intel platform. It is impossible to get a single desktop computer from a major vendor of Intel-compatible computers with either a) No operating system or b) any non-Microsoft operating system.

The naive will present the Macintosh or Linux as counterexamples. I respectfully request that the Macintosh advocates return when the market agrees with them (we can measure this by allowing them to return when they need to use their toes to count the Macintosh market share percentage). Linux, of course, is a free product and not a commercial venture. As such, its presence as the only "competition" merely reinforces the point that commercial competition with Microsoft's monopoly is impossible.

2) The office software monopoly

Many companies depend on the Microsoft office software suite to run their business. This software is bug-ridden, plagued by security holes, continually increases in cost, and does not reliably interoperate with any other package, including prior versions of itself. Despite this, the software has become a widespread standard, and enjoys the same powerful network effects as Microsoft's operating system.

In the year 1990, there existed a number of viable competitors offering alternative software packages. By the year 1995, many of these alternatives had ceased to exist. By the year 2001, NONE of those alternatives has remained profitable, and only one remains in business. Their marketshare remains in the single digits, their product has not been substantially updated in years, and they were saved from bankruptcy by an investment from Microsoft. They exist at the sufferance of Microsoft -- a token competitor.

Is this what happens to superior products in a free market? No.

Microsoft can use the "taxes" paid by OEMs on their shipping operating system to fund development of their office applications, and offer them as bundles to OEMs at low prices. Exclusivity agreements prevent the OEMs from offering alternatives without paying higher prices overall, and being undercut by their own competitors. Those who prefer not to offer the Microsoft software at all face higher prices for operating system licensing.

Users buying a new computer end up paying for a Microsoft operating system (whether they want it or not) and a Microsoft office application suite (whether they want it or not) because it is cheaper for OEMs to play Microsoft's game than try to survive without the ability to bundle Microsoft's software at the market rate.

It is notable that no major OEM provided testimony against Microsoft during the trial; they know that Microsoft knows who its friends are.

3) The browser monopoly

When the internet threatened to shake Microsoft's hold on the market, Microsoft responded by attacking its competition for browser market share (Netscape) fiercely. This was the ONLY major issue the two antitrust actions have attempted to deal with. Both attempts have failed to produce any noticeable change in the pattern of Microsoft's behavior.

4) The potential media monopoly

Microsoft presents a credible threat of leveraging their operating system monopoly to gain a monopoly on software for the display of streaming media (internet video and audio). This is a clear violation of antitrust law. No court has attempted to address this issue.

In conclusion...

There is only one remedy which offers any hope of redressing the harm done to the free market by Microsoft's abuse of their monopoly. Microsoft must be split into the following entities, all of which must be forbidden to collaborate with each other:

- 1) At least 3 companies offering the Windows operating system. These companies must be compelled to offer the Windows operating system with full source code and without any application bundles (Office, Internet Explorer, etc) to all customers at no additional cost. The cost of the operating system must be publically posted, special discounts to individual vendors forbidden, and any references to other software products forbidden. These remedies are nothing more than current antitrust law requires of a monopoly.
- 2) At least 3 DIFFERENT companies offering the Office application suite, under the same conditions.
- 3) At least 3 DIFFERENT browser companies offering Internet Explorer, under the same conditions.

The proposed settlement, in its present form and in any conceivable revision, addresses none of the problems and provides no solutions. It is a gross miscarriage of justice and must not be allowed to stand.

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Fingerprint: 0CD5 FE63 0CB3 C996 7FFE 82F7 F9F5 A295 FA92 497C